In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 198

LAWRENCE LEWIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 13-22) is not yet reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 23-24) was entered on April 5, 1967. On May 8, 1967, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to May 26,

1967, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the search of the vehicle driven by petitioner, and the seizure of narcotics therefrom, was supported by probable cause.

STATEMENT

Petitioner was convicted after trial by jury in the Southern District of California of concealing, and facilitating the transportation and concealment of, approximately six ounces of cocaine and one ounce of heroin, imported in violation of 21 U.S.C. 174 (I R. 2). He was sentenced to seven years imprisonment (I R. 16). Prior to trial, he had moved unsuccessfully to suppress the narcotics as evidence; and he unsuccessfully objected when the narcotics were offered during the trial.

On October 8, 1965, Leobardo Sandoval, a Mexican national (II R. 26) and reliable informant who had previously furnished exact license numbers of vehicles and descriptions of persons crossing the border carrying narcotics (the information having in each instance been verified by subsequent arrests) (III R. 95), informed Customs Agent Thaine Ellis that he had been offered fifty dollars by a man whom he knew to be a narcotics dealer (III R. 93) to drive a 1955 Ford Station wagon (which he identified by license number), containing narcotics, from Mexico

to the Logan Heights section of San Diego (II R. 19; III R. 77). Ellis knew that a standard method of smuggling narcotics into this country is to hire Mexican citizens for twenty-five or fifty dollars to drive automobiles across the border, park and leave them, wait for an hour, and then pick up the vehicles and drive them back to Mexico (III R. 103-104).

On October 9, Sandoval called Ellis again and said that final arrangements had been made and that the station wagon containing the narcotics would cross the border at the San Ysidro port of entry at ten o'clock (II R. 19). At eleven forty-five, Ellis was informed by an inspector at the port of entry that the vehicle had been stopped and was being held in a secondary inspection area (II R. 19-20). Ellis directed that it be released without being searched (II R. 24; III R. 78), and arranged to have it followed (II R. 20). The agent who did so informed Ellis by radio that the agent was being followed by a 1963 Buick bearing Nevada license plates. At Ellis' direction, the agent allowed the Buick to pass him (II R. 20).

Ellis stopped the Ford Station wagon and informed Sandoval that he was being followed by the Buick, a fact of which Sandoval was unaware (II R. 21). Sandoval, in turn, told Ellis that there was heroin in the station wagon (III R. 86), and that he had been instructed to park the vehicle at a designated spot in Logan Heights, get out of the vehicle, leave the keys in the ashtray, and wait nearby. He had also been told, he said, that someone would drive the

station wagon away, then return in an hour and leave the vehicle so that he could return it to Mexico (II R. 23).

While Sandoval proceeded in the station wagon, the substance of the information he had given Ellis was communicated by the latter to Customs Agent Paul Samaduroff (II R. 6-7), who was instructed to maintain surveillance of the area in Logan Heights where Sandoval was to leave the station wagon. Samaduroff observed the Buick in this area, saw it park, and saw petitioner walk away from it. Upon being advised by radio that petitioner had entered the station wagon and driven off, he followed the station wagon (II R. 8) and when petitioner parked arrested him (II R. 11, 17). Samaduroff then turned petitioner over to another agent, and drove the station wagon to a service station near customs headquarters, approximately a mile from the site of the arrest, in order to place it on a hoist to search for the narcotics. The narcotics were found in contraceptives concealed in the window moulding (II R. 12-14).

ARGUMENT

Petitioner attacks the search of the station wagon and the seizure of the narcotics on the sole ground that the search cannot be justified either as a border search or as incident to his lawful arrest on probable cause. In regard to the border search, he contends that the narcotics could have been placed in the vehicle when it was stopped on the American side of the border while Sandoval talked to Ellis. In regard to

the arrest, he contends that, since Sandoval did not know him and had never seen him before, there could have been no probable cause justifying his arrest.

The customs agents had sufficient information from Sandoval to give rise to a reasonable belief that the vehicle contained narcotics which had been concealed in it in Mexico, thus justifying search of the vehicle as a border search. See *Alexander* v. *United States*, 362 F. 2d 379 (C.A. 9), certiorari denied, 385 U.S. 977. The same information justified the search as a search of a movable vehicle based upon probable cause to believe that it contained contraband. See *Carroll* v. *United States*, 267 U.S. 132. And since the agents had probable cause to believe that petitioner was the individual to whom the unlawfully imported narcotics were, by prearrangement, to be delivered, his arrest was justified and the search permissible as an incident thereto.[1] The search and seizure may be upheld on any of these grounds.

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[1] The information known to Ellis was, of course, imputable to Samaduroff, who made the actual arrest and search. *United States* v. *Bianco*, 189 F. 2d 716, 719 (C.A. 3); *Weise* v. *United States*, 251 F. 2d 867 (C.A. 9), certiorari denied, 357 U.S. 936; *United States* v. *Li Fat Tong*, 152 F. 2d 650, 652 (C.A. 2); *Williams* v. *United States*, 308 F. 2d 326, 327 (C.A.D.C.); *Smith* v. *United States*, 358 F. 2d 833, 835 (C.A. D.C.).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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